

little importance if the Commission does not address the issues expeditiously. In another pending rulemaking, the Commission has requested comment whether it should adopt a rule whereby it would resolve within 30 days preemption petitions of local land use ordinances which hinder rapid deployment of digital television.⁷¹ The Commission should adopt the same procedure here.

III. The Same Expedited Procedures Should Apply to All RF-Related Preemption Petitions — Including Those Involving RF Interference

The current rulemaking focuses on attempts by local governments to regulate the environmental effects of RF emissions. Some local governments are also attempting to regulate other aspects of RF emission, including interference among licensees. Because the effect of RF emissions regulation is the same on CMRS licensees, the Commission should adopt the same expedited procedures for all preemption petitions involving RF emissions, including those involving interference issues. Two examples illustrate the kinds of obstacles CMRS providers are facing with increasing frequency.

1. *Bloomington, Minnesota.* In July 1996 the City of Bloomington, located in the Twin Cities metropolitan area, amended its zoning ordinance to require that “[a]ll applications for new service shall be accompanied by an intermodulation study which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference

⁷¹ See *Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission Facilities*, MM Docket No. 97-182, *Notice of Proposed Rulemaking*, FCC 97-296, App. B, ¶ 18 (released Aug. 19, 1997) (“*Broadcast Facilities Notice*”).

problems.”⁷² U S WEST Communications hoped to build a number of PCS base stations/transmitters within Bloomington because of its size and strategic location within the metropolitan area. Although demands for interference studies are beyond the City’s authority, U S WEST Communications nonetheless attempted to respond to the City’s request by performing intermodulation studies up to the fifth order of harmonics which incorporated all the frequencies registered with the FCC within a one mile radius of each proposed cell site and with all the frequencies belonging to the City.

Bloomington’s consulting engineer took the position that this study was inadequate, and he demanded that U S WEST perform studies “up to the 11th order” of harmonics, stating:

The carriers do not know where [the City’s] sites are located and I am not sure where they are going to be located, therefore *I will make the decision* as to which order of IM [intermodulation] applies.⁷³

U S WEST is unaware of any software capable of reaching the 11th order of harmonics; it estimates that performing a study at the seventh order alone would entail up to 10 hours of computer time and result in 200 pages of data — to provide information of no value to the City. U S WEST offered to meet with the City’s outside consultant in an attempt to reach an acceptable accommodation, but he refused to meet. The bottom line, though, is that the City still refuses to issue building permits to U S WEST Communications.

⁷² City of Bloomington Code, Chapter 19, Zoning, Article V, Performance Standards, § 19.63.05(m).

⁷³ Letter from Leonard Koehnen, Leonard Koehnen and Associates, to Galen Doyle, Bloomington Planning Department (dated April 1, 1997) (emphasis added).

Other Minneapolis suburbs have since retained the same engineer. Perhaps not surprisingly, these other localities have also adopted the requirement that new applications be accompanied by adequate intermodulation studies.⁷⁴

2. *Colorado Springs, Colorado.* U S WEST Communications wants to build cell sites in Colorado Springs, Colorado's second largest city. An entity with an experimental license opposed several of U S WEST's proposed sites on the ground that U S WEST's licensed operations would interfere with its research and development operations which use the experimental licenses. U S WEST demonstrated that (a) there would no interference in fact, the experimental licensee having submitted incorrect data; (b) experimental licensees do not have interference protection rights,⁷⁵ and (c) in any event, the Commission has exclusive jurisdiction over all interference matters. Nonetheless, the Colorado Springs Planning Commission denied U S WEST's applications.

The Commission unquestionably has exclusive jurisdiction over RF interference matters.⁷⁶ Whether a local government regulates RF emissions because of interference or health concerns, the impact on carriers (and the public) is the same: delays in the provisioning of service and increased costs of service. The Commission should therefore apply its new, expedited preemption procedures to all local government attempts to regulate RF emissions.

⁷⁴ These jurisdictions include the City of Bayport, Columbus Township, City of Cottage Grove, City of Lauderdale, City of Osseo, City of Burnsville, City of Tonka Bay, and City of Brooklyn Park.

⁷⁵ In fact, Commission rules place the burden on the experimental licensee to ensure its operations do not interfere with other authorized users. *See* 47 C.F.R. § 5.151(a)(2).

⁷⁶ *See, e.g., Broadcast Facilities Notice* ¶ 12.

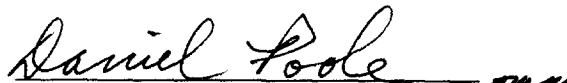
CONCLUSION

Only one year ago the Commission, after consulting with other expert federal agencies, determined that its amended environmental rules "represent the best scientific thought and are sufficient to protect the public health" and that therefore "no further state or local regulation is warranted."⁷⁷ Local governments have not challenged the adequacy of these rules; no further state or local regulation is necessary or, given NEPA and the Communications Act, appropriate.

For the foregoing reasons, U S WEST urges the Commission to limit the information state and local governments may request of licensees and to adopt expedited preemption procedures as modified above.

Respectfully submitted,

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⁷⁷ *RF Order*, 11 FCC Rcd at 15184 ¶ 168.